

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MICROSOFT CORPORATION,

Plaintiff,

v.

DATATERN, INC.,

Defendant.

CIVIL ACTION NO. 1:11-cv-02365-KBF
CIVIL ACTION NO. 1:11-cv-02648-KBF

SAP AG and SAP AMERICA, INC.,

Plaintiff,

v.

DATATERN, INC.,

Defendant.

NOTICE OF MOTION OF DATATERN, INC. TO SUBSTITUTE

PLEASE TAKE NOTICE that upon the supporting Memorandum of Law filed concurrently herewith, defendant DataTern, Inc. (“DataTern”), by and through its attorneys, McCarter & English, LLP, will request that this Court, at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, New York, New York, on such date and time specified by the Court for an order allowing DataTern to substitute its filing under seal. Specifically, DataTern hereby requests that the Court allow DataTern to withdraw its filing of Exhibit 15 to the Declaration of Kara Lynch In Support of DataTern, Inc.’s Opposition to Microsoft Corporation’s Motion for Summary Judgment of Non-Infringement of U.S. Patent Nos. 5,937,402 AND 6,101,502 (“Lynch Declaration”), which contained the 2001 Asset Purchase Agreement between Ontos, Inc. and FireStar Software. In its place, DataTern seeks to file the

Asset Purchase Agreement between Amphion Innovations, PLC, FireStar Software, Inc. and Richard Morgan, dated December 20, 2007, under seal. The latter was referred to properly as Exhibit 15 to the Lynch Declaration and in DataTern's opposition papers, while the former was filed in error under seal with the Court.

Dated: December 11, 2012

McCARTER & ENGLISH, LLP

/s/ Lee Carl Bromberg

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Attorneys for Defendant

DataTern, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above Notice of Motion was served on this 11th day of December, 2012 upon counsel of record for Microsoft Corp., SAP AG and SAP America, Inc. via *ECF*.

/s/ Lee Carl Bromberg

Lee Carl Bromberg